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EXAMINER	
HARPER, LEON JONATHAN	

ART UNIT	PAPER NUMBER
2166	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/784,196	GERNOLD, PETER	
	Examiner	Art Unit	
	Leon J. Harper	2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-7,10-13,15-17,19 and 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-7,10-13,15-17,19 and 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/15/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed 12/21/2007 has been entered. Claims 1,7 and 15 have been amended. Claims 4,8,9,14 and 18 have been cancelled. Accordingly, claims 1-3, 5-7, 10-13, 15-17, 19 and 20 are pending in this office action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,7,15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,10, and 19 of copending Application No. 10784848. Although the conflicting claims are not identical,

they are not patentably distinct from each other because the subject mater of the instant application would have been obvious to an artisan of ordinary skill in the pertinent art in light of the disclosure of application 10784848. Claims 1, 10 and 19 of application 10784848 are directed to receiving information from a user for use in generating data subscriptions, with steps for receiving, and storing distribution criteria and the type of data to be distributed and a step for generating data subscriptions based on the type of data to be distributed (See Application 10784848 claims 1, 10, 19). Claims 1,7,15 of the instant application are directed to accessing the type of data to be distributed, along with the distribution criteria and generating data subscriptions based upon the type of data and the distribution criteria. The instant application would have been obvious to an artisan of ordinary skill in light of claims 1,10 and 19 of application 10784848 because once an artisan can receive input identifying the type of data to be distributed, this information would have to be accessed in order to generate the data distribution.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5-7, 10-13, 15-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5870605 (hereinafter Bra) in view of US 5884324 (hereinafter Chen).

As for claim 1 Bra discloses: receive user input identifying a publication to be used to create data subscriptions, the publication being one of multiple predetermined publications identifying a type of data capable of being distributed to data sites (See column 5 lines 9-13). Receive user input identifying a distribution criterion by which data is to be distributed to data sites by subscriptions automatically generated without human intervention (See column 6 1-10); Store in computer-readable medium for later access , subscription-generation information including the identified publication and the identified distribution criterion (See column 4 lines 50-55) ;

access using a first computer system the subscription-generation information identifying the publication and distribution (See column 15 lines 13-21 and see column

11 lines 25-30); access , using the first computer system and the accessed subscription-generation information, application data of various data types including the type of data identified by the subscription-generation information; (See column 8 lines 40-48); generate using the first computer system data subscriptions for the publication to be distributed to data sites corresponding to computer systems that are distinct from the first computer systems, the computer systems and the first computer system being connected in a network of distributed computer systems operating an application program having the application data of the various data types (See column 5 lines 9-15) wherein each data subscription is generated automatically by the first computer system based only on the type of data to be distributed to data sites, the accessed application data, and the distribution criterion (See column 5 lines 23-26), generate assignments of data sites to the generated data subscriptions, the assignments being generated based on application data, using the first computer system, and automatically without human intervention (See column 6 lines 1-10):store, in computer-readable medium for later access, the generated assignments; distribute a portion of the application data to the data sites corresponding to computer systems the distribution being based on the data subscriptions generated by the first computer system (See column 12 lines 30-40) and

While Bra does not differ substantially from the claimed invention the disclosure of) identifies a portion of the application data to be distributed to one or more of the data sites of the second computer system is not necessarily explicit. Chen however does disclose identifies a portion of the application data to be distributed to one or more of

the data sites of the second computer system (See column 3 lines 62-67 note: if selected). It would have been obvious to an artisan of ordinary skill in the pertinent art to have incorporated the teachings of Chen into the system of Bra. The modification would have been obvious because both systems are directed to updating information and adding the publisher, subscriber model to the data replication system of Cheng would have made data replication more efficient by allowing replication to be done only when necessary based on the publisher, subscriber model (See Bra column 1 line 65- column 2 line 5).

As for claim 2, the rejection of claim 1 is incorporated, and further Chen discloses wherein the one or more code segments are further configured to: access information related to data sites wherein the data site information includes attributes and attribute values associated with a particular data site (See column 3 lines 45-50); and associate a particular data site with a particular data subscription based on the data site information being related to the portion of application data to be distributed in the particular data subscription (See column 3 lines 59-64).

As for claim 3, the rejection of claim 1 is incorporated, and further Bra discloses: wherein the type of data to be distributed to data sites comprises a business object type (See column 6 lines 19-25).

As for claim 5, the rejection of claim 1 is incorporated, and further Chen discloses: wherein: the distribution criterion comprises an attribute of the type of data to

be distributed, and the generation of data subscriptions comprises generating data subscriptions wherein each data subscription is generated based on the attribute of the type of data to be distributed to data sites (See column 3 lines 46-50).

As for claim 6, the rejection of claim 1 is incorporated, and further Chen discloses: wherein: the distribution criterion comprises a distribution criterion based on a relationship of a portion of the application data with an employee that uses a data site (See column 4 lines 14-17 authorization is a relationship), and the generation of data subscriptions comprises generating data subscriptions wherein each data subscription is generated based on the relationship of the portion of the application data with the employee that uses the data site (See column 3 lines 55-60 note: if the user is not authorized then no subscription is generated).

Claims 7,10-13 are system claims containing substantially the same limitations as the computer readable medium claims 1-6 and are thus rejected for the same reasons as claims 1-3,5-6.

Claims 15-17, 19-20 are method claims corresponding to computer readable medium claims 1-6 and are thus rejected for the same reasons as set forth in the rejection of claims 1-6.

Response to Arguments

Applicant's arguments filed 12/21/07 have been fully considered but they are not persuasive.

Applicant argues:

Bracho describes a system in which information is published to subscribers based on the event and the content of the event as specified by the subscriber. Even assuming for the sake of argument only that the action's contention that in Bracho "user specifying what they want is essentially setting the distribution criterion" (see action at page 6, lines 9-10) is correct, Bracho relies on the subscribers to register a subscription for an event type and indicate the content and types of events that the subscriber wishes to receive. In contrast to Bracho's approach, amended claim 1 recites (among other features):

Examiner responds:

Examiner is not persuaded. Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. Interpretation of Claims-Broadest Reasonable Interpretation During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA

1969). In this case the assignments must be generated based on application data. Column 5 lines 5-10 disclose the publication of data in response applications.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon J. Harper whose telephone number is 571-272-0759. The examiner can normally be reached on 7:30AM - 4:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LJH
Leon J. Harper
March 30, 2008

/Hosain T Alam/
Supervisory Patent Examiner, Art Unit 2166